IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1214 OF 1993.

Smt. Vimal Ramchandra Savairam, aged 50 years, occ. household, r/o R0827/2, Kasba Peth, Pune-11. .. Petitioner

Versus

1. Savala Bapu Vairat, aged 50 years, occ. service,
2. Sou. Ambubai Savala Vairat, aged 35 years, occ. service,
3. Chandrakant Savala Vairat, aged 21 years, occ. nil,
4. Sou. Sindhubai Chandrakant Vairat, aged 18 years, occ. household,
5. Suresh Savala Vairat, aged 18 years, occ. education, all residents of A/0827/2, Kasba Peth, Pune - 11. .. Respondents

Mr. C.G. Gavnekar for the petitioners.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 4TH AUGUST, 2005

ORAL JUDGMENT. :

1. Petitioner-tenant has invoked the provisions of Article 227 of the Constitution of India and sought to challenge the impugned judgment and order dated 25th January, 1993, passed by the Additional District Judge

(for short "Appellate Court") confirming the judgment and order passed by the Principal Judge, Small Causes Court, Pune (for short "Trial Court") dated 11th September, 1989, whereby, the suit filed by the respondents has been decreed.

2. Heard Mr. C.G. Gavnekar, learned counsel appearing for the petitioner. None appeared for the respondent. The premises in question is situated in Survey No.827/2, Kasba Peth, Pune, which is also reflected in the title of the suit, as well as, the Writ Petition. There is no dispute about the same. The respondents filed Suit No.963 of 1987 on 26th December, 1986, for possession and recovery of rent. It was resisted by the petitioner. However, after considering the material on the record, the Trial Court granted the decree for possession on 11th September, 1989. By Notification dated 17th October, 1989, under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "The Slum Act"), apart from other City Survey numbers, Survey No.827 of Kasba Peth in question has been declared as a slum area as contemplated under the Slum Act. The provisions of Chapter VI, specially Section 22 gives protection to the occupants/occupier of any building or premises, if it falls within the ambit of such

Notification. Such protection, if available on the face of the record, in such cases, there is no reason not to extend such protection of the Slum Act. On this foundation, the learned counsel appearing for the petitioner-tenant submitted that admittedly on the record of the Appellate Court such Notification relating to the area in question has been placed on the record at Exhibit-27. The Appellate Court, in paragraph 10 also noted the same, but refused to grant extension and protection of the Slum Act to the petitioner-tenant on the foundation that there was no material evidence brought on the record that the suit premises falls within the City Survey in question. There is no dispute in the present case that when the Suit was filed in the year 1986, there was no such Notification or protection available to the petitioner, but in view of the present Notification dated 17th October, 1989, if available and placed on the record, there is no reason that the Appellate Court should not take note of this and pass such order, after considering the merit of the submission raised by the petitioner-tenant or such other occupant, basically in respect of extension of protection which is available under the Slum Act.

3. Considering this, I am of the view that if there is a Government Gazette published in accordance

with law, the Appellate Court, in such circumstances, ought to have taken note of such Gazette and after giving full opportunity to the parties and consider the merit of the submission as raised insofar as the protection and/or benefit available under the provisions of the Slum Act is concerned. There is nothing on the record to justify that there was any objection filed by the landlord that the premises is not within the ambit of such Notification. In absence of such objection, there is no reason to overlook the situation of the premises in question as admittedly, as per record, it falls within the Survey No.827 of Kasba Peth, Pune.

4. Taking all this into account, I am inclined to interfere with the order passed by the Appellate Court. Accordingly, the said order of the Appellate Court dated 25th January, 1993, is quashed and set aside. The matter is remitted back to the Appellate Court for reconsideration, after giving full opportunity to the parties. The Appeal shall be disposed of by the Appellate Court within a period of four months from the receipt of this order.

5. The Writ Petition is accordingly allowed on the above terms. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]